1949.

File No. O Munis Dist /49

Legal Department

A BRANCH

Subject:—

Opinions under the District Municipal Act, 1901.

252/E

File No. O Munis Dist /49

321-A

C O N T E N T S.

Legal Department File No. O. Munis. Dist. /49.

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Election of Mr. Parmar as President.

District Municipal Act, 1901. Sections 23(13) and 174(1).

R.L.A.'s opinions No.O-Local Boards-25 Dated 15-8-1928, No. 7224, dated 16-8-41 and No. 4568, dated 21-8-34.

Office of the R.L.A.

It is no doubt true that the election of Mr. Parmar as President of the Palanpur Municipality is not legally valid. The election of a president is, however, a statutory duty and an act complete in itself: it is not an order or resolution of a Municipality the execution of which is unlawful under section 174(1) of the Bombay District Municipal Act (cf. R.L.A.'s opinion No. O-Local Boards-25 dated 15-8-1928). Consequently, it would not be lawful for the Collector to take action under section 174(1).

A person de facto in possession of an office is presumed to be rightly in possession until the contrary is established by due course of law (p. 34 of Halsbury's Laws of England Vol. 8). There is no power vesting in the Collector or Government to set aside the election of Mr. Parmar, and the only authority that can set aside his election is the Civil Court (see R.L.A.'s opinion No. 7224, dated 16-8-1941 and No. 4568, dated 21-8-34 referred to therein.).

Id/- P.M.L.

14-3

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 2963, dated the 16th March 1949.

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CONFIDENTIAL. Office of the R.L.A.

A copy of the Election Rules of the Rajapur Municipality and of the resolution passed by the Special General Meetting on the 17th February 1949 would have facilitated the consideration of the question by the R.L.A. However, on the assumption that the Rules in this behalf are generally similar to those in other Municipalities, e.g., the Ahmedabad Municipality, it would seem that the Special General Meeting was not competent to consider the question of the eligibility of the candidate or of any irregularity in the election procedure preceding the declaration of their results, such as the failure to publish the lists of nominated candidates seven days in advance or to post the specimen of voting papers 48 hours before the commencement of the elections. These are matters which may properly be canvassed either in an election petition or in a duly constituted suit. The duty of the Meeting was merely confined to certifying the result upon a count; and, if the Municipality refuses to perform that duty, action under section 178(1) as suggested by the Commissioner, S.D., would be legally feasible.

Id/- P.M.L.

12-3

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 167, dated the 12th March 1949.

PSM. 6-6
4C

5352/9-4-49.

It appears that after the scrutiny and counting of votes was completed, the result of the election was declared at the Special General meeting of the Bulsar Municipality held on 2-3-1949 (presumably under a rule corresponding to rule 41 of the Ahm'd Election Rules). and the names of the Councillors declared elected were certified by the Chairman to the Collector. It appears that as required by rule 33 of the Bulsar Municipal Election Rules and Sect. 20 of the Bom. Distt. Municipal Act, the Collr. of Surat published the names of the elected Councillors in the B.G.G. (vide Collr's Notifn. No. B.U.L. 41 dt. 16-3-49). The Distt. Judge, Surat, reports that Election Petitions Nos. 14 and 17 are filed for wards Nos. 4 and 5 and petition No. 15 for setting aside the election of all the wards. In his endorsement No. B.U.L. 41 dt. 5-4-49, the the Collr. of Surat refers to R.L.A.'s opinion No. 3694 dt. 3-7-31 and states that as the names of the Councillors have already been published, they have a right to be and to act as Councillors, but that if a meeting cannot be called under sec. 23(8), the term of the present councillors would extend to and expire on the day before the first general meeting, if and when it is called. He holds that as the elections of all the wards are challenged, the Councillors cannot be said to have been finally elected.

It may be pointed out that the Collr. ha wrongly referred to R.L.A.'s opinion No. 3694 dt. 3-7-31; but the relevant opinion bears No. O. Munis -Dist. 17/30 dt. 9-7-1930.

The view at A-A of the H.& L.G. Deptt. office note as a correct .

Id/- E.B.

9-4

R.L.A.

A - A to be the reply.

Id/- P.M.L.

9-4

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 3084, dt. 9-4-1949.

PSM. 6-6
4C

Office of the R.L.A.

The question for consideration is whether in spite of the general Orders issued in G.R.,R.D., No. 140 A, dated 20-9-1038, specific sanction of Government would be necessary under section 53(1) of the Bombay District Municipal Act, 1901 in each case.

Sub-section (1) of section 53 of the Bombay District Municipal A ct, 1901 inter alia provides that it shall be lawful for the Municipality to deppsite with the sanction of the Provincial Government in any bank in the Province of the Bombay any surplus funds in their hands which maynot be required for current charges. Under G.R., R.D. No. 140 A, dated 20-7-1938 Government has directed under section 53(1) of the Bombay District Municipal Act, 1901 that the surplus funds of the Municipalities may be deposited in such Co-operative banks of limited liability as are certified fit by the Registrar of Co-operative Societies. This Government Resolution can be construed as a general sanction granted by the Provincial Government under section 53(1) and a specific sanction in each case does not appear to be necessary. The section speaks only of 'sanction' and in the absence of any qualifying words the sanction may be either general or specific.

Sub-section (2) of section 74 of the Bombay Local Boards Act, 1923 provides interalia that the local fund shall be kept in such bank or Co-operative Society registered under the Bombay Co-operative Societies Act, 1912 as may be approved by the Provincial Government. While interpreting

that section R.S.A. and in his opinion No. 1927, dated 7-6-1923 held that that section contemplates the approval of Government to the bank or Society in which the local fund was to be kept and that there was no provision in the Act authorizing Government to delegate the power of approval to the Registrar. This opinion is not in terms applicable to the interpretation of section 53 of the Bombay District Municipal Act, 1901 as the provisions of section 53 are not similar to those of section 74(2) of the Bombay Local Boards Act. In this case Government has accorded the sanction as is required by section 53(1) to depositing surplus funds with those Societies which are certified fit by the Registrar and there is no question of delegating the power of granting sanction.

Id/- P.M.L.
28-3
Remembrancer of Legal Affairs.

U. O. R. to the Health and Local Govt. Department
No. 3391, dated 29th March 1949.

PSM. 6-6
4C

6116/ 22-4-49.

On resignation of Mr. Pranlal as President and Councillor of the Radhanpur Municipality, the vacancy of the President should have been filled up by electing another Councillor thereto in the manner prescribed in sub-section (13) of section 23 of the Bom. District Municipal. Sub-section (13) of section 23 inter alia proves that the provisions of sub-sections (8), (9), (10) and (11) shall be applicable so far as may be regarding calling of meetings and the procedure to be followed at such meeting. In the present case, however, the meeting was not called within the prescribed time limit of twenty-five days and the procedure prescribed in sub-sections (10) and (11) has not been complied with. The election of the new President is not legally valid, but a person de facto in possession of an office is presumed to be rightly in office, until the contrary is established by due course of law. Government has no power to

A | set aside the election. The view expressed in the H. & L.G.D., note is correct. (vide R.L.A.'s No. 2963 dated 16-3-1949) and the papers may be "seen

A | and returned".

If approved, reply may be as at A.

Id/- E.P.B.
26-4

Id/- P.M.L.

6-5

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 5060, dated 9-5-1949.

PSM. 6-6
4C

Office of the R.L.A.

Bombay District Municipal Act, 1901 . section 3(13)(b).

Under section 3(13)(b) of the Bombay District Municipal Act, 1901, what is necessary to make a street a public street is that it must have been sewered out of the Municipal or other public funds. It appears from paragraph 4 of the President's letter at page 1 ante that the streets are not sewers ~~are constructed~~ by the municipality. If the Municipality desires to treat them as public streets action may be taken under section 90(5).

2. A fee of Rs. 80/- should be charged to the Municipality.

Id/- P.M.L.

9-5

Remembrancer of Legal Affairs.

H.R. to H. & L.G.D.,No. 5140, dated the 10th May 1949.

PSM. 6-6
4C

out of such funds. Consequently these streets cannot be considered public streets even though the sewers are s constructed.

Office of the R.L.A.

Pen Municipality enforcing payment of arrears. The Bombay District Municipal Act, 1901. Section 46(b)(II)

In view of the fact that the clerk and the peon were appointed in pursuance of the resolution of the Committee of management and with the approval of the Commissioner no serious objection can be taken to these appointments as they would be deemed to have been made in compliance with the provisions of section 46(b)(ii) of the Bombay District Municipal Act, 1901. The fact that this staff was attached to the Prant Office would not make any difference in the legal position when the Prant officer himself was the Chairman of the Committee of management and needed this staff for the discharge of his duties as Chairman. There is no substance in the other contentions raised by the President of the Pen Municipality. There would be no legal objection to enforcing the payment of the arrears of pay of this staff.

Id/- P.M.L.

23-5

Remembrancer of Legal Affairs.

R U.R. to H. & L.G.D., No. 5727, dated the 23rd May 1949.

PSM. 6-6
4C

Office of the R.L.A.

The Commissioner, N.D. states that the preliminary list of voters published by the Anand Municipality is not in compliance with the provisions of rule 4A of the Anand Municipal Election Rules, and the instructions issued in H. and L.G.D. memorandum No. 6144/33, dated 19-10-1948. Even the Election Roll published on 1-4-1949 is not in accordance with the decision of the Appellate Authority, because it contains the names of certain voters whose names were decided to be struck off the Roll. The Commissioner is, therefore, of opinion that the Municipality should go through the preparation and publication of the Election Roll denove. R.L.A. is requested to advise whether the Commissioner's view is correct.

Rule 4A of the Anand Municipal Election Rules provides that the voter's name, his father's name and surname, if any, his address (including the number, if any, of his residence) and the nature of his qualifications shall be entered in the list of voters prepared under rule 4. The Commissioner states that the provisions of rule 4A are not complied with in that the addresses of the voters were not given. However regulations for the conduct of elections under the Ballot Act, 1872 were held to be so far only directory that an election was not invalidated by the non-observance of them unless the non-observance was of a character contrary to the principle of the Act, or might have affected the result of the election (vide p. 382 of Maxwell). In this particular case rule 4A is directory and merely because the list of voters do not contain the addresses of the voters, it cannot be said that such omission is likely to affect the result of the election. It is admitted

that the Appellate authority directed that the names of six persons be struck off the list of voters. Names of the four persons were actually struck off by the Secretary but through inadvertence names of two persons were retained on the list. The mistake arose from the omission to do the mechanical act of striking off the list of the names successfully objected to. The Secretary was bound to correct the list in accordance with the decision of the Appellate authority before the Election Roll was published; and a Court of Law could direct the Secretary to set the matter right after the Election Roll is published. (See Rex Vs . Hanley Revising Barrister (1912), 3 K.B. p. 518). It is not a case of non-performance of duty which the Secretary ought to have performed.. As he made error in the performance of the mechanical part of his duty, and the mistake has been detected, the Secretary can, even after the Roll has become final correct it in accordance with the decision of the appellate authority; for the correction would not prejudice the claim of any voter whose name is validly entered in the Roll. Under the circumstance, it is not necessary to follow de novo the procedure for preparing a new Roll.

The second question whether the Collector can take action under section 174(1) of the District Municipal Act does not arise.

Id/- P.M.L.

26-4

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 4523, dated the 26th April 1949.

PSM. 6-6
4C

Legal Department.

The Rajpipla Municipality was constituted under the order of the Maharaja of Rajpipla which had the force of law and continued under the Rajpipla Municipal Act and deemed to be constituted under the Bombay District Municipal Act by virtue of paragraph 6 of the Indian States (Application of Laws) Order, 1948. Consequently it is not necessary to issue any notification under the Bombay District Municipal Act constituting that Municipality. The Bansda Municipality was constituted under an order issued by the Ruler of that State which order had the effect of law. Consequently that Municipality would also be deemed to have been constituted under the Bombay District Municipal Act by virtue of paragraph 6 of the Indian States (Application of Laws) Order, 1948. It would not also be necessary to issue any notification under the Bombay District Municipal Act constituting that Municipality.

Id/- J.R.D.

26-5

Additional Secretary to Government.

U.R.to H. & L.G.D.,No. 5889, dated the 26th May 1949.

PSM. 6-6
4C

Office of the R.L.A.

Question whether reservation of seats for Muslims can be done away with without amending the A ct. Bombay Village Panchayats Aet, 1933. Section 6(1)

H.M.(Local Self Govt.) desires that the legal position should be examined under the existing Acts to see if Government can do away with reservation of seats for Muslims, etc., without amending the Bombay Local Boards Act, the Municipal Acts and the Bombay Village Panchayats Act. H. & L.G.Deptt. is of the opinion that the words "if any" in clause (c) of sub-section (1) of section 10 of xxthe Bombay Municipal Boroughs Act and section 11 of the Bombay District Municipal Act and section 6 of the Bombay Local Boards A ct, 1923, give ample discretion to Government to decide whether seats should be reserved for the representation of Women, Muslims, Harijans, Backward Tribes, Anglo Indians and Indian Christians and consequently it would be open to Government to decide not to reserve any seat for Muslims without amending these Acts whereas under the proviso to section 6(1) of the Bombay Village Panchayats Act Government has to decide whether reservation of such seats is necessary having regard to the population of such community, class or tribe in the village, and consequently if the populatio of Muslims requires reservation of seats, the non-reservation of seats for them would violate the spirit of the Act. Remembrancer of Legal Affairs is requested to advise.

2. Sub-clause (ii) of clause (c) of section 11(1) of the Bombay District Municipal Act, 1901, clause (c) of section 10(1) of the Bombay Municipal Boroughs Act, 1925, and section 6 of the Bombay Local Boards A ct, 1923, are similarly worded. Under these provisions, by rules or by order of Government the number of members to be elected, the

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number and extent of constituencies by which the members to be elected by each constituency and the number of seats, if any, to be reserved for the representation of women, Muslims, Harijans, Backward tribes, Anglo Indians and Indian Christians have to be determined. The words "if any" no doubt indicate that it is within the discretion of Government to reserve any seat for the representation of women, Muslims, Harijans, Backward tribes, Anglo Indians, and Indian Christians. However, this discretion has to be exercised by Government on the basis whether these communities or classes are sufficiently numerically strong for representation and that without reservation of seats for them it would not be possible for them to return their own representatives. If on applying this criterion Government considers that Muslims in any area do not require reservation of seats on the population basis and even without reservation of seats they would be able to return their representatives, there would be no legal objection to Government to decide not to reserve any seat for Muslims. This basis has got to be applied to all other communities and classes as well. If, Government considers that on that basis the communities and

it would not be a proper exercise of discretion of Government not to reserve seats for Muslims while reserving seats.

amended accordingly.

3. The second paragraph of section 6(1) of the Bombay Village Panchayats Act provides:-

> "In ~~xxxx~~ any such Panchayat such number of seats, shall be reserved for the representatives of women, Muhammadans, Harijans or backward tribes as may be prescribed by the Provincial Government under clause (b) of sub-section (1) of section 108"

The proviso thereto says that no such seats shall be reserved for the representatives of Muhammandans, Harijans or Backward tribes in any panchayat unless the Provincial Government is of opinion that the reservation of such seats is necessary having regard to the population of such communities, class or tribe in the village. It is, therefore, apparent from this provision that the total abolition of reservation of seats for Muslims cannot be done without amending this provision,. If the population of Muslims does require reservation of seats, such seats will have to be reserved under existing provisions.

Id/- P.M.L.

20- 7

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 8264, dated the 21st July 1949

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4C

Office of the R.L.A.

The attention of Health and Local Government Department is invited to R.L.A.'s opinion No. 4141, dated the 14th April 1939 where a similar question is considered. It is the essence of a general constituency with reservation of seats for certain community or interest that the candidates representing such community or interest have the additional advantage of contesting even the general seats. Since in the present case there were two Muslims candidates and the number of seats reserved for Muslims was one the President was right in holding the election and declaring one of them as elected to fill the reserved seat (see rules 15 A and 29A of the Election Rules of the Junnar Municipality). The other Muslim candidate will have to be declared as elected to one of the two general seats.

Id/- P.M.L.

19-7

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 8166, dated the 20th July 1949.

PSM. 6-6
4C

Office of the R.L.A.

Bombay District Municipal Act, 1901.

Section 50

Setting up barriers on public streets for collecting tolls.

In the absence of any statutory provision it would not be legally open to Municipalities to put up barriers on public streets for the purpose of recovering their octroi and terminal taxes (cf. R.L.A.'s opinions Nos. 0 Motor I/I dated the 23rd March 1928, 7896 dated the 5th August 1939 and 1356 dated the 13th February 1941).

Id/- P.M.L.

6-7-

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 7527, dated the 7th July 1949.

PSM. 6-6
4C

Office of the R.L.A.

Bombay District Municipal Act, 1901.
Section 15(1)(v)

Whether the Collector can declare vacant a seat after declaration of the election result.

It appears that Messrs. Harihar, Nasipudi and Hallad were sureties for certain employees of the Navalgund Municipality and under the terms of the bonds executed by them, their liability as sureties was to continue for a period of 60 days from the date on which their notices of withdrawal were received by the Municipality. As they wanted to contest the elections, they gave notice of withdrawal to the Municipality. on 17-11-1948, and before the expiry of the period of 60 days, they submitted their nominations and were declared duly elected.. The new Board was constituted on 26-1-1949. However, on 7-1-1949 the President applied to the Collector requesting him to declare these persons as disqualified under section 15(1)(b) of the Bombay District Municipal Act. The Collector rejected his application on the ground that the councillors were free from disqualification on 26-1-1949. An appeal against the said order of the Collector is preferred to the Commissioner, S.D., who has raised the following questions for R.L.A.'s consideration.

(1) If a person at the time of his nomination is subject to a disqualification under section 15(1) and is declared elected, whether the Collector can declare his seat vacant.

(2) Whether his seat can be declared vacant even if the disqualification has disappeared before the term of his office as councillor has commenced.

2. The first question is fully covered by R.L.A. opinion No. 311 dated 17-1-1936. Since these councillors were disqualified before they were elected section 15(2) of the Bombay District Municipal Act, 1901, will have no application, and the Collector would not be competent to declare their seats vacant under sub-section (3). Further, they have already taken their office. Consequently, the only course left open to the aggrieved party would be to approach the Court for the purpose.

3. The second question is also covered by R.L.A.'s opinions Nos. 11378 dated 28-11-1947 and 2105 dated 2-3-1948. The material date to determine whether a person is or is not qualified is the date of nomination. The fact that these persons were free from disqualification by the time their office commenced would be immaterial, since these councillors were subject to the disqualification at the time of submitting their nomination. The reply to the second question would, therefore, be in the negative. However, in view of the reply to the first question, the second question does not arise.

Sd/- P.M.L.

19-8

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 9368, dated 20th August 1949.

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5C

Office of the H.L.A.

Bombay District Municipal Act, sections 45(1) read with section 48(j).

Poona Octroi Rules and by-laws.

Exemption from Octroi on state Transport Service goods.

Seen and returned.

The view taken by Home Department is correct. Clause (c) of rule 4(2) of the Poona Octroi Rules and By-laws is similar to clause (c) of rule 4(2) of the Ahmednagar Octroi Rules and By-laws which was considered by the Remembrance of Legal Affairs in his opinion No. 563, dated the 17th January 1949.

Id/- P.M.L.

7-7

Remembrancer of Legal Affairs.

U.R. to Home Deptt. No. 7607, dated the 8th July 1949.

PSM. 6-6
4C

The following are the charges levied against Mr. Tribbak Narsu Chaudhari, Municipal Councillor of Pachora:-

(1) that on 4-7-47 he unauthorisedly used the pair of bullocks of the municipality for his private use in sowing his field; and

(2) that he unauthorisedly signed municipal documents i.e. certified copies of the Municipal assessment list, letters of authorities of Municipal servants and order for the supply of articles to the Municipality. etc.

As regards the first charge, it appears that certain members of the Municipality made a requisition to the President to call a meeting to consider the question of unauthorised action on the part of Mr. Chaudhari and to refer the matter to higher authorities for proper investigation under the Bombay District Municipal Act. In its resolution No. 57 dated 1-9-47 the Municipality, however, decided that the rent of Rs. 5/- for use of bullocks be recovered from Mr. Chaudhari. It appears that the said amount was paid on 10-3-48 (p. 67 ante). As regards the second charge, it appears that the documents were signed by Mr. Chaudhari either under the written or oral instructions of the President (vide pp. 95-98 ante). In this respect attention is also invited to resolution No. 59 dated 1-9-47 passed by the Municipality (pp. 45-55 ante). It, however, appears that in his letter No. M.V.N.W. 8-1998 dated 18-9-48 the Collr. of East Khandesh requested the President to place before the General Board the two points mentioned therein for its consideration. At the meeting held on 26-10-48, Mr. S.D.Patil moved a proposition that because of the disgraceful conduct of Mr. Chaudhari, he should be disqualified to be

a Councillor for five years. This was passed by the Municipality in its resolution No. 165 dated 26-10-48. The Collr. of East Khandesh, however, called upon Mr. Chaudhari to show cause why he should not be removed, as recommended by the general board, from office under sect. 16 of the Bom. District Municipal Act, 1901. Mr. Chaudhari submitted his explanation to the Collr. on 31-12-48. After obtaining Mr. Chaudhari's explanation, it appears that the Collr. of East Khandesh submitted the papers to the Commr. of C.D. for order. In his order dated 29-6-49 the Commr. C.D., however held that as Mr. Chaudhari had already paid Rs. 5/- in accordance with the resolution of the Municipality and that he had signed the documents under the oral or written instructions of the President, his case did not fall under the provisions of sect. 16 of the Bom. Distt. Municipal Act.. Attention is also invited to the End. of Commr. C.D. No. Pachora 0/3 dated 16-9-49 (p. 11 ante).

The H.M. (L.S.G.) is of opinion that Mr. Chaudhari's offence seems to be quite technical, R.L.A.'s opinion is however, requested to advise.

PSM. 6-6
4C

Reply.

The R.L.A. agrees with the view expressed by H.M. (L.S.G.) and is of opinion that no further action is necessary in this case.

Id/- P.M.L.

14-11

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D ., No. 13002, dated 16-11-1949.

PSM. 6-6
4C

Office of the R.L.A.

Bombay District Municipal Act, 1901. Sections 17(2)(b), 20, 22,and 23. Election Rules of the Urban Islampur Municipality Rule, 26

In view of the order of the Bombay High Court vacating the injunction issued by the District Judge, Satara, the legal position has become much simpler. Under rule 26 of the revised Election Rules of the Urban Islampur Municipality the power to declare the results of the elections vests in the special general meeting. Since the injunction order has been vacated by the High Court, it would be m competent for the President of the Municipality to call a special general meeting to revise the previous resolution in respect of the result of elections of ward No. 4 and to declare Messrs. Gajanan Sakharam Pawar and Shamsuddin Y. Momin as elected to the general seats and Mr. Mohammad Ismail Khatik to the reserved seat.

2. Under section 20 of the Bombay District Municipal Act, 1901, the names of councillors finally elected to the Municipality shall be published in the Official Gazette. This provision was interpreted by the R.L.A. (Mr. Nanawati) in his opinion No. 17-30, dated 9th July 1930 as being declaratory and not mandatory, and that the result of the election can be published also piecemeal. In his opinion No. 311, dated 10th January 1936, the R.L.A.(Sen) construed the words "finally elected" with reference to section 22 that if no steps are taken under that section within the specified time for questioning the validity of the election, the councillor must be considered to have been finally elected, and his name should be published in the Bombay Government Gazette. The opinion of the R.L.A. dated 10th July 1930 that the provisions of section 20 are declaratory and not mandatory can no longer hold good in view

of section 23 being amended by Bombay Act No. XVIII of 1939 whereby sub-section (8) of was substituted, which sub-section requires that the meeting for the constitution of a new municipality should be called within 25 days from the date on which the names of the councillors of the new municipality are published in the Official Gazette under section 20. Consequently, section 20 will have to be treated as mandatory.

On the second point as to whether the words "finally elected" in section 20 have to be construed with reference to section 22, with due respect I think the view taken in the aforesaid opinions is not correct. The words "finally elected" in section 20 mean declared elected as a final act in the chain of administrative acts prescribed for the holding of election. If these words are to be construed with reference to section 22, it means that in cases where the election is challenged the publication of such elected councillor will have to be held up resulting in the delay of the constitution of a new municipality, which could not be the intention of the Legislature. Consequently, there appears no objection to the publication of the names of all councillors declared elected including the names of those councillors whose election would be declared at the special general meeting to be convened by the Islampur Municipality without waiting for the result of the pending suit or of any election petition if filed in this respect.

3. Under section 17(2)(b) the term of office of out-going councillor shall be deemed to extend and to expire on the day before the date of such meeting. Consequently, there would be no legal objection to the out-going councillors to continue to function until new municipality is constituted and a new President elected.

Id/- P.M.L.

23-8-

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 9567, dated the 24th August 1949.

PSM. 7-6-
4C

L.D.R.I.No. 118/7/49.

The Panchagni Municipality has resolved to levy a visitor's tax on all the visitors coming to Panchgani municipal district. The Commr. C.D. considers that apart from other practical difficulties felt by the Commr. S.D. when a similar proposal was mooted by the Matheran Municipality, it does not appear that under sect. 59(2) of the Bombay District Municipal Act, 1901, the Municipality is authorised to impose such tax. The H.& L.G.D., concurs in the view expressed by the Commr. C.D. and holds that as under List II in the Seventh Schedule to the Govt. Of India Act, 1935, the Prov. Govt. has no power to impose such a tax, it would not be legal to allow the Panchgani municipality to levy the proposed tax. R.L.A. is requested to advise whether the view expressed by the H. & L.G. D. is correct.

R.L.A.

I do not think that this tax can be called a "Capitation tax". It is in effect a tax on entry of persons. a tax on immigrants. The method of levy may be per capita; but that doems not make it a capitation tax. A capitation tax can make no distinction; it must fall on all.

Reply :- The view taken by H. & L.G.D., is correct.

Id/- P.M.L.
18-8
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D.,No. 9341, dated 19-8-1949.

L.D.R.I.No. 19772/49.

As pointed out in R.L.A.'s opinion No. 5889 dated 26-5-49, the Rajpipla Municipality was constituted under the Order of the Maharaja of Rajpipla which had the force of law and continued under the Rajpipla Municipal Act and was deemed to be constituted under the Bombay District Municiapal Act by virtue of para. 6 of the Indian States (Application of Lands I Order, 1948. In his letter No. M.U.N.120 , dated 7-9-49, the Commr. N.D. states the Rajpipla Municipality does not levy taxes other than "octroi", and that as under sec. 12(2) read with explanation 2 of the Bombay District Municipal Act, the payment of "octroi" cannot be deemed to be payment of "qualifying tax" he requests instructions from Govt. as to how the qualifying tax should be fixed. The H. & L.G.D., considers that the only feasible course is to move the Municipality to submit proposals for the levy of the usual taxes under the Bombay District Municipal Act, and that until the presented taxes are levied, the existing Board may be allowed to function.

Office of the R.L.A.

The view taken by the Health and Local Government Department is correct. The Rajpipla Municipality may be asked to take steps to levy the qualifying tax.

Id/- P.M.L.
5-12
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 14096, dated the 6th December 1949.

PSM 7-6
4C.

Office of the R.L.A.

Bombay District Municipal Act, 1901, Sect.57

Contribution under an agreement.

The view taken by Secretary H. & L.G.D. is not correct. Section 57 of the Bombay District Municipal Act, 1901 contemplates gratuitous contributions and not liabilities arising under contracts as in the present case (see page 297 of the Bombay Municipal Boroughs Act, 1925 by Gandhi & Patel). Consequently it would not be competent for the Sangamner Municipality to stop the annual grant of Rs. 2000/- to the Gokhale Education Society unless and until the Society is found unable to conduct the school efficiently and the contract terminated under clause 16 of the agreement.

Sd/- P.M.L.
14-8
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 9219, dated the 16th August 1949.

PSM. 7-6
SC

Office of the R.L.A.

Taking over the management of the school from the Gokhale Education Society.

The only relevant provision of the Agreement dated 31st December 1940 is clause 16 which provides that if for any reason, the Gokhale Education Society be unable to conduct the school, all buildings, furniture etc. shall revert to the Municipality without demand of any compensation from the Municipality for any expenditure incurred on the building or dead-stock and without any right thereto of the said Society and free from any incumbrance. Consequently it would not be competent for the Sangamner Municipality to terminate the contract and take over the management of the school unless and until the Gokhale Education Society is found to be unable to conduct the school efficiently.

Id/- P.M.L.

12-9

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No. 10295, dated the 12th September 1949.

PSM. 7-6
4C